

**Notice of Allowability**

Application No.

09/518,554

Applicant(s)

VROMAN, JACOB

Examiner

Humera N. Sheikh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 25 May 2006.
2. ☒ The allowed claim(s) is/are 23,24,27-32,36-38 and 40-45.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 6-29-00; 3-31-03
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

5. ☐ Notice of Informal Patent Application (PTO-152)

6. ☒ Interview Summary (PTO-413),

Paper No./Mail Date 6/9/2006.

7. ☒ Examiner's Amendment/Comment

8. ☒ Examiner's Statement of Reasons for Allowance

9. ☐ Other \_\_\_\_\_

*Humera N. Sheikh*  
HUMERA N. SHEIKH  
PATENT EXAMINER  
TC -1600

## **DETAILED ACTION**

### **Status of the Application**

Receipt of the Amendment after Final and Applicant's Arguments/Remarks, both filed 05/25/06 is acknowledged.

The non-statutory obviousness-type Double Patenting Rejection of claims 23, 24, 27-32 and 36-45 has been withdrawn, by virtue of Applicant's persuasive remarks.

Claims 23, 24, 27-32, 36-38 and 40-45 are pending in this action. Claims 1-22, 25, 26 and 33-35 have previously been cancelled. Claim 39 has currently been cancelled. Claims 23, 24, 27-32, 36-38 and 40-45 are allowed.

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Joseph C. Zuccherro on 06/09/2006.

The application has been amended as follows:

**In the Specification:**

On page 11, line 4, the term ‘conditions’ has been changed to “**conditions**”.

On page 11, line 21, the term ‘embodiment’ has been changed to “**embodiment**”.

**In the Claims:**

In Claim 23, line 6, between the terms ‘from’ and ‘caprylic’, the phrase “**the group consisting of**” has been added.

In Claim 23, line 13, between the terms ‘from’ and ‘esters’, the phrase “**the group consisting of**” has been added.

In Claim 29, line 2, the term ‘ascorbic acid’ has been changed to “**L-ascorbic acid**”.

In Claim 40, the claim dependency has been changed to depend upon claim 23, rather than claim 39.

In Claim 41, the claim dependency has been changed to depend upon claim 23, rather than claim 39.

Claim 40 has been renumbered as Claim 39.

Claim 41 has been renumbered as Claim 40.

Claim 42 has been renumbered as Claim 41.

Claim 43 has been renumbered as Claim 42.

Claim 44 has been renumbered as Claim 43.

Claim 45 has been renumbered as Claim 44.

**Claim 39 has been cancelled.**

*Allowable Subject Matter*

Claims 23, 24, 27-32, 36-38 and 40-45 are allowed.

The following is an examiner's statement of reasons for allowance:

The primary reasons for allowance are that the prior art (Siddiqui – U.S. Pat. No. 6,146,664; Hernandez *et al.* – U.S. Pat. No. 5,843,411 & Ozlen – U.S. Pat. No. 5,441,740) does not disclose nor fairly teach a method of providing one or more of the following treatments as instantly claimed: UV protection, decrease or alleviation of wrinkles or stimulating collagen production in a mammal comprising the instant combination of components. More specifically, the prior art does not disclose or teach topically applying at least 30% L-ascorbic acid, whereby the mean particle size of L-ascorbic acid is no greater than approximately 5  $\mu\text{m}$ , in combination with an exfoliant and a non-aqueous carrier.

In contrast, the prior art (Siddiqui '664) teaches an ascorbic acid composition in a silicone vehicle, whereas the instant invention desires a non-silicone-based vehicle. Silicone, as known in the art, is a polymer which, when applied to skin acts as an epidermis-like lipophilic barrier that hinders the transport of water and water-soluble molecules (*i.e.*, ascorbic acid). Because Siddiqui uses silicone oil, which is specifically not claimed by Applicants, very little, if any of the ascorbic acid in the Siddiqui formulation penetrates deep into the skin. The formulation of Siddiqui is an occlusive ascorbic acid formulation that creates a film on the skin for the superficial treatment of the epidermis. Moreover, Siddiqui fails to teach an exfoliant,

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particularly an enzymatic exfoliant and also fails to teach at least 30% L-ascorbic acid, whereby the mean particle size of L-ascorbic acid is no greater than approximately 5  $\mu\text{m}$ .

Similar to the Siddiqui ('664) reference, the Hernandez *et al.* ('411) reference teaches an ascorbic composition for treating photo-aged skin and wrinkles, whereby the ascorbic acid composition is also comprised in a silicone vehicle, rather than a non-silicone-based vehicle. Silicone oil, as delineated above, hinders the transport of water and water-soluble molecules (*i.e.*, ascorbic acid), thus creating an occlusive formulation. In contrast, the present invention desires deep penetration of ascorbic acid into the skin and specifically excludes a silicone-based vehicle. Hernandez *et al.* also fails to disclose or teach incorporation of an exfoliant (*i.e.*, enzymatic) and also fails to teach at least 30% L-ascorbic acid, whereby the mean particle size of L-ascorbic acid is no greater than approximately 5  $\mu\text{m}$ .

The instant invention demonstrates an improvement over prior art formulations since it provides for non-irritating ascorbic acid formulations that have sufficient concentrations of ascorbic acid as well as increased stability, due to increased penetration of the ascorbic acid into skin.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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### Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Humera N. Sheikh whose telephone number is (571) 272-0604. The examiner can normally be reached on Monday through Friday from 8:00A.M. to 5:30P.M., alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Humera N. Sheikh

Patent Examiner

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June 9, 2006

*Humera N. Sheikh*  
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*hns*